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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

JAN 31 2005

FILE:

EAC 01 178 51380

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to classify him as a Minister.

The director denied the petition on August 5, 2002 after determining that the petitioner failed to establish that the beneficiary had the requisite two years of continuous work experience as a Minister immediately preceding the filing date of the petition.

The petitioner, through counsel, filed a timely appeal with additional documentation. In support of the appeal, counsel submitted copies of the beneficiary's time sheets, which documented the beneficiary's employment from 2000 through 2002. The AAO dismissed the appeal on August 15, 2003, finding that the petitioner failed to establish the beneficiary's continuous employment as a minister for the requisite two-year period prior to the filing of the petition; April 1999 to April 2001. In its decision, the AAO noted that the beneficiary did not enter the United States until November of 1999 and the record contained no evidence to establish "where the beneficiary was prior to his November 1999 entry, let alone that he was employed continuously and full-time in a religious occupation."

In addition to finding that the petitioner failed to meet its burden of establishing the beneficiary's continuous employment during the requisite two-year period, the AAO found beyond the decision of the director, that the petitioner failed to submit the types of financial documentation sufficient to satisfy the regulatory requirements. Specifically, the AAO determined that the petitioner's submission of bank statements and an unaudited Accountant's Compilation Report, did not satisfy 8 C.F.R. § 204.5(g)(2).

In his motion, filed on September 12, 2003, counsel argues it is "erroneous to conclude that the Beneficiary did not have the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition." Counsel states:

The Beneficiary submitted documentation to show that he had experience as a minister from December, 1999, until the date that the petition was filed on April 29, 2001. In addition, the Beneficiary submitted generalized information to show that he had been a minister in 1997 and 1998 which was prior to the additional evidence he submitted. The Beneficiary believed that this information would be sufficient. He has additional information, however, that establishes that he worked as a full-time minister in Italy from 1994 up until the time he entered the United States. He is in the process of obtaining that information and will submit it as soon as it arrives.¹

Though counsel states the beneficiary has submitted documentation of his experience as minister from December 1999 up to the date of filing, and that he has submitted "generalized information to show that he had been a

¹ Though the regulation at 8 C.F.R. § 103.5(a)(1)(i) does not state or imply that the petitioner may freely supplement the record up until the date of appellate adjudication, no further evidence has been received by the AAO, despite the passage of more than one year since the filing of counsel's motion.

minister in 1997 and 1998," it is important to note that counsel does not address the critical time period noted by the AAO in its previous decision, the period covering April 1999 through the time he entered the United States in November 1999.

As it relates to the issue of the petitioner's ability to pay, counsel submits copies of financial statements dated December 31, 2001 and December 31, 2002, respectively.

It is noted that the financial statements are accompanied by a cover letter from the petitioner's accountant. The cover letter states that the financial statements related to the petitioner's financial position are "limited to presenting . . . information that is the representation of management," and that the accountant has "not audited or reviewed the accompanying Statements" As the petitioner's accountant clearly indicates that the statements were "not audited or reviewed," they do meet the requirements of 8 C.F.R. § 204.5(g)(2) which requires either copies of annual reports, federal tax returns, *audited financial statements*.

Moreover, as the financial statements are from December 2001 and December 2002, such evidence is insufficient to demonstrate that the petitioner had the ability to pay the beneficiary from the time of filing in April 2001, continuing to the time the beneficiary obtains lawful permanent residence.

Finally, beyond the original decision of the director and our previous determination dismissing the appeal, we find one additional issue that must be addressed. Article Seven of the petitioner's constitution provides the following:

MINISTERS – FULL TIME WORKERS

According to the teaching of the New Testament, there are ministers through which the ascended Lord governs the Church which is His Body . . . Approved men are called to these offices by revelation or prophecy, recommendation by the Executive Council and report to the General Council.

QUALIFICATIONS/REQUIREMENTS FOR ADMISSION INTO THE FULL-TIME MINISTRY OF THE CHURCH (1 Tim. 3:1 – 12)

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g) He shall not be above forty (40) years of age.

According to the petitioner, the beneficiary began his full-time employment as a minister in the petitioning church in December 2001. At that time, the petitioner was 47 years old. At best, the petitioner appears to have hired the beneficiary in direct contravention of its own constitution. At worst, it calls into question the petitioner's credibility in claiming that the beneficiary was employed on a full-time basis for the requisite two-year period. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).


Page 4

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The AAO decision of August 15, 2003 is affirmed. The petition is denied.